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Rice v Paramount Building Solutions, Inc. and American Drug Stores, LLC.
2011 L 010481, Cook County

The plaintiff, Rice, an employee of American Drug Stores, LLC, ("ADS") was walking through the double doors of the Jewel Osco grocery store where he was employed on September 20, 2010, when he slipped and fell on RipSaw floor stripper, leaking from a box in a corner of the back room behind the double doors. Rice was diagnosed with CRPS. He had about $300,000.00 in past medical, a projected $750,000.00 to $900,000.00 in future medical and over $2,000,000.00 in future lost wages.

Plaintiff sued Paramount Building Solutions, Jewel Osco's floor cleaning vendor, alleging it negligently caused and allowed the floor stripper to spill. Paramount had primary coverage of $1,000,000.00 and excess coverage of $5,000,000.00. Paramount denied responsibility for the accident and denied it did anything wrong. Discovery deposition testimony of several grocery store witnesses was they saw a man, whom they identified as a Paramount employee, working on a Paramount floor cleaning machine in the back room in the area of the accident for several hours that day and for the last time about 30 minutes before the accident. No one testified they saw the Paramount employee hit or strike the box of RipSaw with a machine, nor did anyone see him drop the box. The plaintiff's theory was that the Paramount mechanic ran the machine into the box of RipSaw when he was leaving the store. Paramount's mechanic testified, in Polish, that he was at the store for at most 15 minutes, he was there to only remove a machine from the store and he left the store over 3 hours before the accident.

Paramount began an endless barrage of "scorched earth" discovery and multiple baseless, repetitive motions that lasted for almost three years before the case was called to trial. During discovery serious issues were raised regarding Paramount's own discovery responses including: failure to produce Paramount's own photos and accident report (which resulted in a 5.01 jury instruction); production of the correct manual for the correct machine the Paramount employee was working on; which machines were present at the store; undisclosed modifications made to an exemplar of the "correct" machine and late, improper disclosure of surveillance video of Rice. The plaintiff's liability expert performed testing and concluded the machine could have pierced the box of RipSaw causing the leak. Paramount's liability expert examined a similar machine and concluded the plaintiff's expert was wrong. There were issues regarding which "correct" machine would fit through the Jewel Osco doors and modification of the second "correct" machine which changed the configuration and did not allow the machine to pierce the box.

The store security officer and assistant store director testified that they searched for surveillance video of the accident, but the only camera that could have recorded any part of the accident did not capture the accident. Despite the testimony, Paramount filed a third-party complaint for contribution and for spoliation of evidence against ADS. In its claim for spoliation of evidence, Paramount alleged that the video camera would have captured the accident and alleged ADS spoliated evidence by not preserving the video even though the uncontradicted testimony of the witnesses who viewed the video was that the video did not show the accident.

Pursuant to the services agreement between the parties, three times ADS tendered to Paramount its defense and request for indemnification. Three times the request was denied with different reasons each time. The service agreement provides for the award of attorneys fees if the terms of the agreement are litigated.

After years of tortured, protracted discovery, the court granted summary judgment in favor of ADS, on the spoliation count. Additionally, the motion judge entered and continued to after the trial the plaintiff's motion for sanctions against Paramount's attorney for failing to produce the correct manual for any machines and failing to identify the machines at the store on the date of the subject accident and causing the plaintiff to incur additional costs from his expert performing the same work twice on different machines.

At mediation a month before trial, the parties did not budge from a policy limits demand and an offer within the primary coverage. Complicating the mediation and the trial was that Rice's workers compensation case against ADS was open when the trial started. In an effort to avoid the expense of trial and the potential finding of liability against ADS at trial, a significant offer was made to settle the work comp case including a waiver of the lien which would have kept ADS off the liability case verdict form (and strengthened ADS's argument for attorneys fees). The offer was rejected. After the trial started and there was the very first suggestion after three years that a settlement offer the plaintiff may accept may be made by the excess carrier, we immediately withdrew the last offer in the work comp case as the value of the waiver greatly increased.

The completely circumstantial case proceeded to trial. There was no eyewitness testimony regarding how the box was caused to leak. At trial, several motions in limine were entered, including the standard motion that all witnesses are excluded from the courtroom until they testify and that no witnesses be told of the trial testimony of any other witnesses. As the trial progressed, steadily increased offers within the excess coverage were extended. In our third week of trial, 21 of 24 listed witnesses had testified. While on the stand, the 20th witness, Paramount's medical expert, was barred from testifying as during Paramount's attorney's direct exam, the doctor testified that Paramount's attorney provided his expert with the trial testimony of the plaintiff's treating physician.

On the evening that Paramount's attorney caused his expert to be barred, Paramount settled the case for a confidential amount. The parties were to close the next morning. As part of the resolution of the case, Paramount's third party complaint for contribution against ADS was dismissed with prejudice, the future medical on the work comp case was settled for a $1.00 contract and the plaintiff would fund his own MSA and ADS waived only its lien paid to date, a fraction of the withdrawn last pretrial offer on the work comp case. ADS will now pursue its action against Paramount and its insurer for its attorneys fees.